

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**VALLEY HEALTH SYSTEM LLC d/b/a SPRING VALLEY HOSPITAL
MEDICAL CENTER and CENTENNIAL HILLS HOSPITAL MEDICAL
CENTER and DESERT SPRINGS HOSPITAL MEDICAL CENTER and
VALLEY HOSPITAL MEDICAL CENTER, and
SUMMERLIN HOSPITAL MEDICAL CENTER LLC d/b/a
SUMMERLIN HOSPITAL MEDICAL CENTER**

and

Case 28-CA-123611

KATHY MORRIS, an Individual

and

Case 28-CA-127147

KATRINA ALVAREZ-HYMAN, an Individual

**STIPULATION OF FACTS,
JOINT MOTION TO SUBMIT CASE ON STIPULATION AND
JOINT MOTION REQUESTING PERMISSION TO FORGO
SUBMISSION OF SHORT POSITION STATEMENTS**

Counsel for the General Counsel of the National Labor Relations Board (General Counsel) and Respondents Valley Health System LLC (Respondent VHS) d/b/a Spring Valley Hospital Medical Center (Spring Valley) and Centennial Hills Hospital Medical Center (Centennial Hills) and Desert Springs Hospital Medical Center (Desert Springs) and Valley Hospital Medical Center (Valley), and Summerlin Hospital Medical Center LLC d/b/a Summerlin Hospital Medical Center (Respondent Summerlin, and collectively Respondents),¹ collectively referred to as “the Parties,” and unopposed by the Charging Parties, hereby enter this Stipulation of Facts and jointly petition the Administrative Law Judge (ALJ), in order to effectuate the purposes of the National Labor Relations Act (Act) and to avoid unnecessary costs

¹ The parties jointly move to correct the caption, names and commerce information of Respondents, and to conform all pleadings in this matter to the corrected caption, names and commerce information, as set forth correctly herein.

and delay, to exercise her powers under Section 102.35(a)(9) of the Rules and Regulations of the National Labor Relations Board (Board), and decide this case on stipulation.

The Parties further request that the ALJ permit them to forgo the submission of short statements of position as described in Section 102.35(a)(9) of the Board's Rules and Regulations. This request has no bearing or effect on the Parties' right to file briefs in this matter.

1. The Parties agree that this Stipulation of Facts, with attached exhibits described herein, constitutes the entire record in this case and that no oral testimony is necessary or desired by the Parties. In the event the ALJ grants this joint petition, the Parties request that she set a date for the filing of briefs at least 60 days out from the approval of this petition.²

2. In Cases 28-CA-115963, 28-CA-120097 and 28-CA-120294, the Charging Parties and Respondent Summerlin entered into non-Board settlements to settle all allegations in the Third Consolidated Complaint and Notice of Hearing (Complaint) pertaining to those cases. The Complaint, receipt of which is hereby acknowledged by Respondents, is attached as *Joint Exhibit 1*. The ALJ's Orders approving the conditional withdrawal of the settled charges, severing those charges and dismissing the Complaint as to those charges, are attached as *Joint Exhibits 2 and 3*.

3. The Parties agreed to submit to the ALJ on this stipulated record the allegations pertaining to Cases 28-CA-123611 and 28-CA-127147, and specifically those allegations stated at Paragraphs 4(l), 4(m) and 6 of the Complaint, and at Paragraph 7 of the Complaint only to the extent that it refers to Paragraphs 4(l), 4(m) and 6.

² The request for filing of briefs at least 60 days hence is based in part of the schedule of Counsel for the General Counsel, with a previously scheduled vacation set for September 22 to October 5, 2014.

4. Upon the charge and first amended charge in Case 28-CA-123611 filed by Kathy Morris (Morris) on March 3 and April 29, 2014 respectively (attached as *Joint Exhibits 4 and 5*), receipt of which is hereby acknowledged by Respondents, and upon the charge and first amended charge in Case 28-CA-127147 filed by Katrina Alvarez-Hyman (Alvarez-Hyman) on April 23 and June 19, 2014, respectively (attached as *Joint Exhibits 6 and 7*), receipt of which is hereby acknowledged by Respondents, the General Counsel of the Board, by the Regional Director for Region 28, acting pursuant to the authority granted in Section 10(b) of the Act, as amended, 29 U.S.C. §151, *et seq.*, and Section 102.15 of the Board's Rules and Regulations, issued the Complaint on June 19, 2014. True copies of the Complaint were duly served by certified mail upon Respondents and upon Morris and Alvarez-Hyman on June 19, 2014. Respondent VHS' Answer to the Complaint and Respondent Summerlin's Answer to the Complaint (attached as *Joint Exhibit 8 and 14*) were duly served upon the Regional Director for Region 28, Morris and Alvarez-Hyman on July 3, 2014.

5. (a) At all material times, Respondent Summerlin has been a limited liability company with an office and place of business in Las Vegas, Nevada (Respondent Summerlin's facility), and has been operating a hospital and medical center providing medical care. In conducting its operations during the 12-month period ending October 30, 2013, Respondent Summerlin purchased and received at Respondent Summerlin's facility goods valued in excess of \$50,000 directly from points outside the State of Nevada. In conducting its operations during the 12-month period ending October 30, 2013, Respondent Summerlin derived gross revenues in excess of \$250,000. At all material times, Respondent Summerlin has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(b) At all material times, Respondent VHS has been a limited liability company with an office and place of business in Las Vegas, Nevada, and has been operating Spring Valley, Centennial Hills, Desert Springs and Valley, which are hospitals and medical centers in Las Vegas providing medical care. In conducting its operations during the 12-month period ending March 3, 2014, Respondent VHS purchased and received at the Spring Valley, Centennial Hills, Desert Springs and Valley facilities goods valued in excess of \$50,000 directly from points outside the State of Nevada. In conducting its operations during the 12-month period ending March 3, 2014, Respondent VHS derived gross revenues in excess of \$250,000. At all material times, Respondent VHS has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and Spring Valley, Centennial Hills, Desert Springs and Valley have been health care institutions within the meaning of Section 2(14) of the Act.

6. Respondents maintain an Employee Handbook for Respondents' employees (Joint Exhibit 9), as well as various policies and procedures on Respondents' internal employee website or Intranet. In addition, Respondents maintain a Service Excellence Expectations Handbook (Joint Exhibit 10) outlining standards of performance for Respondents' employees. During new employee orientation, Respondents' employees are required to sign and acknowledge receipt of the Employee Handbook.

7. Since about September 3, 2013, Respondents have maintained the following rules (rules) concerning the conduct of all employees employed by Respondents at their respective facilities and these rules have been applicable to all employees employed by Respondents at their respective facilities:

- (a) Conduct that interferes with System or Facility operations, brings discredit on the System or Facility, or is offensive to patients or fellow employees will not be tolerated. (Respondents' Employee Handbook, *Joint Exhibit 9*, at page 19);
- (b) In addition to disclosures of health information, employees have an obligation to maintain the confidentiality of business-related and employee information, which includes, but is not limited to all written, verbal and electronic information. (Respondents' Employee Handbook, *Joint Exhibit 9*, at page 20);
- (c) Don't speak negatively about a patient, co-worker, or the hospital. (Respondents' Service Excellence Expectations Handbook, *Joint Exhibit 10*, at page 8);
- (d) [Respondents have] designated English as the language in which all business will be conducted at [their] Hospitals. (Respondents' Code of Conduct, HR 606 (HR 606), attached as *Joint Exhibit 11*, at paragraph IV(C));
- (e) English is to be used among employees in the work environment when conducting business with each other and when patients or customers are present or in close proximity. (Respondents' Code of Conduct, HR 606, *Joint Exhibit 11*, at paragraph IV(C)(1));
- (f) While on duty, all communications between staff and patients, visitors, or customers will be conducted in English unless interpretation or translation

is requested or required. (Respondents' Code of Conduct, HR 606, Joint Exhibit 11, at paragraph IV(C)(2)).

8. (a) Respondents have maintained an Alternative Resolutions of Conflicts Program (ARC Program), attached in its entirety as Joint Exhibit 12, which states that employees who do not opt out of the ARC Program shall bring any dispute in arbitration on an individual basis only, and not on a class, collective, or private attorney general representative action basis and shall agree to the following;

(1) There will be no right or authority for any dispute to be brought, heard or arbitrated as a class action ("Class Action Waiver"). The Class Action Waiver shall not be severable from this Agreement in any case in which (1) the dispute is filed as a class action and (2) a civil court of competent jurisdiction finds the Class Action Waiver is unenforceable. In such instances, the class action must be litigated in a civil court of competent jurisdiction; and

(2) There will be no right or authority for any dispute to be brought, heard or arbitrated as a collective action ("Collective Action Waiver"). The Collective Action Waiver shall not be severable from this Agreement in any case in which (1) the dispute is filed as a collective action and (2) a civil court of competent jurisdiction finds the Collective Action Waiver is unenforceable. In such instances, the collective action must be litigated in a civil court of competent jurisdiction.

(b) Depending on their circumstances, employees were (and still are) introduced to the ARC Program in the context of one of the following processes: During the

course of the new-hire process for employees hired after July 15, 2013; or during the roll-out of the program to all existing employees in November 2013.

(c) When the ARC Program was first rolled out to Respondents' existing employees in November 2013, Respondents designed a communications campaign to introduce the ARC program. Information about the ARC Program was provided to all employees online. (The online information is attached as Respondents' Exhibit 1.) Employees were given an ARC Acknowledgement, ARC Agreement and ARC Opt Out Form. (Joint Exhibit 12) Employees were advised of their right to opt out of the ARC Program. The ARC Acknowledgement, ARC Agreement and ARC Opt Out Form were also posted on the Respondents' Intranet for employees to review.

(d) Respondents' employees could voluntarily opt out of the ARC Program by submitting a completed Opt Out Form by fax or mail, or by delivering it in person to their respective Human Resources Department. The Opt Out form is then date-stamped by a representative of Respondents' Human Resources. (The Opt Out Form is included in Joint Exhibit 12, at page 5.)

(e) According to the terms of the ARC Program, if an employee did not sign the Opt Out Form within 30 days of receipt of the materials, then the employee would be bound by the ARC Program.

(f) Kathy Morris was hired by Respondent Summerlin Hospital in August 2011. On November 8, 2013, Morris chose not to participate in the ARC Program and voluntarily signed an Opt Out Form. (Morris's signed Opt Form is attached as Joint Exhibit 13).

(g) The ARC Program is applicable to all employees employed by Respondent Summerlin at its facility and by Respondent VHS at its Spring Valley and

Centennial Hills facilities who have not opted out of the ARC Program by voluntarily signing an Opt Out Form.

(h) The ARC Program is applicable to certain employees employed by Respondent VHS at its Desert Springs and Valley Hospital facilities who have not opted out of the ARC Program by voluntarily signing an Opt Out Form.

(i) (i) The ARC Program is applicable to approximately 747 of Respondent VHS Valley's employees. Of those employees, 38 voluntarily signed Opt Out Forms.

(ii) The ARC Program is applicable to approximately 392 of Respondent VHS Desert Springs' employees. Of those employees, 76 voluntarily signed Opt Out Forms.

(iii) The ARC Program is applicable to approximately 1319 of Respondent Summerlin's employees. Of those employees, 343 voluntarily signed Opt Out Forms.

(iv) The ARC Program is applicable to approximately 1004 of Respondent VHS Spring Valley's employees. Of those employees, 196 voluntarily signed Opt Out Forms.

(v) The ARC Program is applicable to approximately 658 of Respondent VHS Centennial Hills' employees. Of those employees, 117 voluntarily signed Opt Out Forms.

9. (a) This Stipulation does not prevent a party from requesting that the ALJ take judicial notice of matters of public record or of public court.

(b) This Stipulation does not preclude a party from supplementing the record with documentary evidence, to be attached to the party's brief.

(c) This Stipulation is made without prejudice to a party's objection(s) to the materiality or relevancy of any facts stated herein or of supplemental documentary evidence submitted as attachment to a brief.

(d) Any party urging that particular facts are relevant or irrelevant will do so in its brief.

(e) Without conceding materiality or relevance, Counsel for the General Counsel does not object to Respondents' supplementation of the record with Respondents' exhibits (attached hereto as *Respondents' Exhibits 1 through 9*) containing documents previously submitted and/or identified by Respondents in their position statements to the Region during the investigation into the underlying unfair labor practice charges.

10. All documents attached as exhibits are true and correct copies of the documents described. The parties agree to the authenticity of the exhibits.

STATEMENT OF ISSUE

Based on the foregoing factual stipulations, the Parties agree that the legal issues to be resolved in this matter are whether Respondents' maintenance of the rules described above in Paragraph 7(a)-7(f) and the portions of the ARC Program described above in Paragraph 8(a)(1) and (2) interferes with, restrains and coerces employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

Signed: _____

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Date: 9-8-14